IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE
AND
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL No. 1476 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 02/09/2004 in W.P.No. 15772 of 2004 on the file of the High Court.)

Between:

M/s. B. Mansukhlal & Company, 22-2-59, Cloth Bazaar, Guntur, Guntur District, rep by its Authorised Signatory Sri Vinayakant M. Chavda, S/o. Mansuklal, R/o. Ring Road, Guntur, Guntur District.

..... APPELLANT

AND

The Regional Provident Fund Commissioner-II,
Sub-Regional Office, 3rd Lane, Krishna Nagar,
Guntur - 522 007,Guntur District.

.....RESPONDENT

Counsel for the Appellant : Mr.RAMA RAO GANTA

Counsel for the Respondent : Mr.R.N.REDDY

The Court made the following :

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THE HONOURABLE SRI DEVINDER GUPTA

THE CHIEF JUSTICE
AND
THE HONOURABLE SRI JUSTICE
C.V.RAMULU

WRIT APPEAL No. 1476 OF 2004

ORAL JUDGMENT:
(per The Honourable Sri Devinder Gupta, the Chief Justice)

Against the order passed by the Regional Provident Fund Commissioner-II, Sub-Regional Office, Guntur, on 30.4.2004 determining the dues under Section 7-C read with Para 26-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, (for short "the Act") for the period from March, 2000 to February, 2002, appeal has been preferred by the appellant herein along with an application filed under Section 7-O of the Act for waiver of the deposit before filing the appeal. Since, there is no Presiding Officer in the Employees Provident Funds Appellate Tribunal, writ petitioner approached this Court for appropriate interim relief pending consideration of the said application by the appellate authority. Learned Single Judge dismissed the Writ petition on the ground that since appeal has been preferred, this Court has no jurisdiction in the matter.

We have heard learned counsel for parties.

To say that once appeal is preferred under the provisions of the Act by a party, which is pending consideration before the appellate authority, before whom, an application for interim relief is also pending, this Court will have no jurisdiction to pass any orders pending consideration of the said application by the appellate authority, is not the correct position in law. Situation is such that application for interim relief could not be heard and no orders could be passed since there is

no Presiding Officer in the Appellate Tribunal. Therefore, this Court has jurisdiction to pass orders pending consideration by the appellate authority as and when appellate authority is in position. Learned counsel for the respondent states that in such like cases, this Court has imposed condition requiring the appellant to deposit 50% of the amount due, and, the same principle be applied in this case also. He also points out that under Section 7-O of the Act, appellant is required to deposit 75 per cent of the amount due.

We have considered the provisions of Section 7-O of the Act, which require that no appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy five per cent of the amount due from him as determined by an Officer referred to in Section 7-A. There is also a proviso thereto that the Tribunal, for reasons to be recorded in writing, waive or reduce the amount to be deposited under the said Section.

We have considered the submission of the learned counsel for the appellant that the order impugned before the appellate authority, on the face of it, is bad in law, in the absence of identification of the workmen against whom amount is sought to be claimed, and, therefore, the same cannot be sustained.

For the purpose of present Appeal, we need not give any elaborate reasons, but, we are of the view that it is a fit case where we can direct that till the application filed by the appellant before the appellate authority for waiver of the deposit is heard and decided, the operation of the order passed by the respondent shall remain stayed. As and when appellate authority is appointed, it will take up the application for consideration and for passing appropriate orders thereupon. We are not directing the appellant to deposit any amount at this stage since the order impugned does not identify the workers

against whom the amount is sought to be deposited. We also make it clear that any observation made by us will not come in the way of the appellate authority in exercising its discretion according to law.

The Writ Appeal, therefore, is disposed of. No costs.

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DEVINDER GUPTA, C.J.

14.09.2004.

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C.V.RAMULU, J.

VR.

To

1. The Regional Provident Fund Commissioner-II,
   Sub-Regional Office, 3rd Lane, Krishna Nagar,
   Guntur - 522 007,Guntur District.
2. Two CD copies.